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Why Haven't the Crits Deconstructed Footnotes?

Arthur D. Austin*

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Abstract

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Austin: Why Haven't the Crits Deconstructed Footnotes?

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A crit is a self-empowered deconstructionist of legal scholarship. Crits brag about freeing the text from the tyranny of the author and then showing how the text embarrasses itself.¹ Every topic has been deconstructed—torts,² contracts,³ gender,⁴ etc.⁵ You name the topic and a crit has "freed" it from capitalist imperialism. As a crit once boasted: it's a "real-life revenge of the nerds."⁶ There is, however, a major glitch in the nerds' revenge. They have not deconstructed one of the most influential fields in law—footnoting.

How can crit radicals, dedicated to the subversion of legal education and the legal system, ignore footnotes? Every professor knows that it is the adroit use of footnotes that tilts the tenure decision.⁷ Lawyers are always trying to slide in an extra argument in a footnote at the bottom of a brief while law students are tortured by having to master the *Bluebook*. Here we have the ideal target for deconstruction and the crits missed it! It's incredible. Are they brain dead from drinking Thunderbird or from the fumes emanating from those Jaguars they wheel? The self-proclaimed "best and brightest" either do not comprehend, or choose to overlook the fact that a footnote *is the best expression of deconstruction*.

Such a concept has its genesis in the deMan vision which postulates that deconstruction undermines, subverts, transgresses and demystifies the "privileged" interpretation of a text or a phrase. "Privilege" is a term of art

* Edgar A. Hahn Professor of Jurisprudence, Case Western Reserve University, Cleveland, Ohio. © 1993 Arthur D. Austin.

I have concluded that the most efficient way to protect the reader and the environment from the footnote plague is to rely on the market system. It is a simple plan: none of the references or citations are printed in the usual location. Instead, a monetary value is printed with each note. This is the value that I have assigned that particular note. Readers may obtain any note, or all the notes, by sending me, in a self-addressed envelope, the appropriate amount of money, indicating the footnote desired. Even Richard Posner has not thought of selling footnotes.

1. This is a cheapo: \$.25.
2. *Id.* (as to price). Only a crit would read, or write, this article.
3. *Id.* (as to price). Not much better than n.2.
4. *Id.* (as to price). A lot of good old venom in this piece.
5. *Etc.* is like buying an old trunk at an auction. \$.17.
6. I like this quote; citation to the source will cost you \$1.00.
7. These are self-cites to my work and therefore go at \$2.50. These babies got press in the *Wall Street Journal* and *New York Times*.

that serves as a symbol for corrupt establishment views.⁸ Hence, in all legal forms of writing, the text dominates the page and dictates meaning. According to deconstruction terrorism, the text is "privileged" in the hierarchical sense of the term. It is *elitist*!

On the other hand, footnotes are deposited at the bottom of the page, published in small, almost unreadable print. Along with crits, women, minorities, people who live in Cleveland, and the homeless, footnotes are the "oppressed." Footnotes are victims of text. Articles condemn the use of footnotes while legal scholarship attacks with ruthless abandon. Some go so far as to say that footnotes are an "abomination"⁹ that serve "devious purposes."¹⁰ Even though notes graciously push text up near the top of the page, they remain in small print and at the bottom. Whatever the circumstances, footnotes are at the mercy of the hierarchy.

It was Jacques Derrida—the master of indeterminacy, the Dirty Harry of *Aporia*¹¹—who recognized that the privileged meaning of the text is a form of oppression. It oppresses by concealing other values and meanings. The "privileged" meaning *purposely* distorts and displaces the *real* meaning, which resides in "a marginal zone where the particular, the unique, and the incommensurate may reside in autonomy from the broader system that threaten to assimilate, absorb or reduce them."¹²

The next step for the Derrida technique was to go to the "marginal zone" (the oppressed source) and "free" a new and competing interpretation. Thus, a deconer—but not the nerdy crit—would go to the "marginal" area of footnotes for a new interpretation. It would be an interpretation that would dispute the validity of the privileged view. It would question the text's privileged *position* at the top of the page. Likewise, marginalizing notes by forcing them into small print would be challenged.

Another strategy is to recognize that the text in legal scholarship is a form of "phallogocentrism."¹³ The text is obviously masculine: it is rational, analytical and objective.¹⁴ It is written to place men in a hierarchical position over women—politically, sociologically and philosophically. The text thus expresses patriarchal values.

8. Quality guaranteed. \$3.60.

9. A steal at \$.35.

10. Has a nice ring to it—priced at \$.58.

11. You are on your own for this one.

12. This costs more because I actually had to read this decon crap. \$3.00.

13. You can have this one free. You won't understand it anyway.

14. This is a *supra* so it's only \$.10. (The original was \$.25.).

On the other hand, footnotes bear traditional feminine qualities: they are nurturing, empathic, flexible, and speak in "another voice."¹⁵ They "care" for the reader. Now it becomes obvious; the deconstructive analogy demonstrates that as the white male legal system oppresses women and minorities, so the text marginalizes footnotes. Under phallogocentrism, the text treats footnotes like women—as a supplement, a helpmate—something made out of a text rib.

This interpretation explains why the oppressors from the text seek to extend the reach of phallogocentrism even further into the footnote womb. They have relied on several tactics. First, there is the *Bluebook*, a masculine instrument of order and rationality created by white male law review editors to maintain phallogocentrism in a field that could be "free" if the voices of women were allowed to circulate. Nit-picking technicalities smother female improvisation and nurturing. Second, until recently, the privileged view was that only initials be used to identify the author's first name. The objective was obvious and insidious—marginalize women even in footnotes by refusing to recognize gender and thereby convey the impression that only males produce scholarship. After complaints by women, the most recent *Bluebook* changed the system to require the use of first names. A small victory for the oppressed in an environment of oppression at the bottom of the page.

What makes the crit oversight of footnotes an aberrational topic for trashing is that deconstruction contains the ideal remedy for footnote marginalization. It wouldn't make sense to reverse the positions with notes on top and text below.¹⁶ A reverse missionary position merely changes the orientation of privileged status. Nor would the famous "footnote revolution" work.¹⁷ No, the best resolution is a Derrida "Double Session."

It is a visual technique designed to alienate, challenge, and force the reader to appreciate the essence of deconstruction, i.e., that words do not have meaning.¹⁸ In *Glas*,¹⁹ Derrida put quotations from Hegel on one side and Genet on the other. "While reading one column you are reminded

15. If you don't know this boilerplate cite then you deserve to pay "a fine" of \$2.00. A feminist who doesn't know this cite should have to take a class from Camille Paglia.

16. The author tries to combine trendiness with political correctness and comes up looking foolish. It's yours for \$.40.

17. This is a "fugitive" cite, bound to get you attention. Excellent for a promotion and tenure article. A good price—\$3.00.

18. This is a cite to several examples of *my* double session technique. These are works of art; make a bid.

19. This is a cite to Derrida. Only crits read the guru of deconstruction, therefore not much of a market. \$.37.

that the gist lies elsewhere."²⁰ A Double Session works as a dredge "which sucks up rocks, sludge, and algae, leaving the water behind."²¹ This is the way it would work on footnotes and text:²²

Footnotes are a manifestation of creativity,²³ thereby contributing to legal scholarship.²⁴ They leave permanent landmarks to obscure information. In the hands of a master, footnotes can be art, humor,²⁵ and candor. 23. "Encountering [a footnote] is like going downstairs to answer the doorbell while making love." 24. "Student-edited journals are the scandal of legal publishing.

You get these kids who check for all the commas but not for substance." 25. "There is the old story of the sadist and the masochist who got married. On their wedding night, the masochist begged: 'Darling, beat me, hurt me! The sadist said: No."

20. A good book on deconstruction. \$1.50.

21. *Id.* as to cite. Two for the price of one.

22. Notice that I privileged footnotes, *i.e.*, "footnote" precedes "text."

23. Another fugitive note. \$3.00.

24. This one costs \$0.67. I can give you a real nasty criticism of law review editors, a fugitive cite from an Old Village Voice. \$4.00.

25. It's a bad joke, probably politically incorrect, so take it free.